1 2 3 4 5 6	Kimberly Gates Johnson, State Bar No. 282369 Gates Johnson Law 2822 Moraga Street San Francisco, CA 94122 Telephone: (628) 219-7750 Facsimile: (628) 219-7750 kimberly@gatesjohnson.com Attorneys for Plaintiff CENTER FOR ADVANCED PUBLIC AWARE	San Francisco County Superior Count  MAY 2 4 2019  CLERK OF THE COURT  BY: Owner Deputy Clerk
7	SUPERIOR COURT OF T	THE STATE OF CALIFORNIA
8	COUNTY OF	SAN FRANCISCO
9	UNLIMITED CI	VIL JURISDICTION
10		
11	CENTER FOR ADVANCED PUBLIC	Case No. CGC-19-576244
12	AWARENESS, Plaintiff,	COMPLAINT FOR CIVIL PENALTIES
13	v.	AND INJUNCTIVE RELIEF
14	DAISO CALIFORNIA LLC; and DOES 1-30,	Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
15	inclusive,	of 1986 (Health & Safety Code § 25249.5 et seq.)
16	Defendants.	Action is an Unlimited Civil Case
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24		BY EAX
25		BY FAX ONE LEGAL LLC
26		ONE LEGAL
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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

1	Plaintiff CENTER FOR	ADVANCED PUBLIC	AWARENESS.	acting in the	public
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2 interest, alleges a cause of action against Defendants DAISO CALIFORNIA LLC and DOES 1-

3 30.

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### **INTRODUCTION AND NATURE OF THE ACTION**

- 5 1. This Complaint is a representative action brought by plaintiff CAPA in the public
- 6 interest of the citizens of the State of California to enforce the People's right to be informed of the
- 7 health hazards caused by exposures to di(2-ethylhexyl)phthalate (DEHP), a toxic chemicals found
- 8 in and on: (a) the gloves with vinyl/PVC components; and (b) the vinyl/PVC cases, sold by
- 9 defendant in the State of California.
- 10 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
- 11 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.
- 12 ("consumers") that they are being exposed to substances known to the State of California to cause
- 13 cancer, birth defects and other reproductive harm through exposures to DEHP, present in and on
- 14 gloves with vinyl/PVC components and vinyl/PVC cases that are manufactured, distributed,
- 15 imported, marketed, sold and otherwise offered for sale or use throughout the State of California by
- defendant and purchased, used or handled by consumers.
- 17 3. Detectable levels of DEHP are found in and on the gloves with vinyl/PVC
- 18 components and vinyl/PVC cases that defendant manufactures, imports, sells or distributes for sale
- 19 to consumers and other individuals throughout the State of California.
- 20 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified
- 21 at Health and Safety Code § 25249.6 et seq. ("Proposition 65"), it is unlawful for a person in the
- 22 course of doing business to knowingly and intentionally expose consumers in California to
- 23 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first
- 24 providing a "clear and reasonable" health hazard warning to such individuals prior to purchase or
- 25 use.
- 5. CAPA contends and alleges that Defendant manufactures, distributes, imports, sells,
- 27 and offers for sale, in or into California, products containing DEHP without Proposition 65's

- 1 requisite health hazard warning regarding the harms associated with exposures to the chemical,
- 2 but not limited to: (a) gloves with vinyl/PVC components, such as the Daiso Cotton Glaves, Model
- 3 #CO29; No. 193, UPC #4 979909 865750; and (b) vinyl/PVC cases, such as the Daiso Romafille
- 4 Pen Case, Model # 323, KO01610, TL-47, UPC #4 549131 138825 (hereinafter, collectively, the
- 5 "PRODUCTS".) Defendant's conduct subjects them to civil penalties for each violation, as well
- 6 an enjoinment and preliminary and permanent injunctive relief. Health & Safety Code §§
- 7 25249.7(a) and (b).

8 PARTIES

- 9 6. Plaintiff CAPA is a non-profit organization organized under the laws of California
- and acting in the interest of the general public, dedicated to protecting the health of California
- 11 citizens and the environment through the elimination or reduction of toxic chemicals utilized in
- 12 manufacturing consumer products and increasing public awareness of those chemicals through the
- 13 promotion of sound environmental practices and corporate responsibility. CAPA is a person, within
- 14 the meaning of Health & Safety Code § 25249.11(a), and CAPA brings this action in the public
- interest pursuant to Health and Safety Code § 25249.7(d).
- 16 7. Defendant DAISO CALIFORNIA LLC ("DAISO") is a private company located in
- 17 California, supplying consumer products and doing business within the State of California at all
- 18 relevant times herein.
- 19 8. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
- 20 Defendant DAISO was and is a person in the course of doing business, with ten (10) or more
- 21 employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
- 22 9. DAISO manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
- 23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
- 24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.
- 25 10. Defendant DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person
- in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
- 27 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and

- 1 manufacture, or each implies by its conduct that it does such, one or more of the PRODUCTS
- 2 offered for sale or use in California.
- 3 11. Defendant DOES 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person in
- 4 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
- 5 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport,
- 6 or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals,
- 7 businesses, or retailers for sale or use in the State of California
- 8 12. Defendant DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the
- 9 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
- 10 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
- 11 State of California.
- 12 13. At this time, the true names of defendant DOES 1 through 30, inclusive, are
- unknown to plaintiff, who, therefore, sues said defendants by their fictitious names, pursuant to
- 14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
- 15 each of the fictitiously named defendant is responsible in some manner for the acts and occurrences
- alleged herein and the damages caused thereby. When ascertained, their true names and capacities
- shall be reflected in an amended complaint.
- 18 14. At all times mentioned herein, DAISO, MANUFACTURER DEFENDANTS,
- 19 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
- 20 appropriate, be referred to collectively as the "DEFENDANTS."

## 21 <u>JURISDICTION AND VENUE</u>

- 22 15. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
- 23 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
- 24 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
- 25 which grants the Superior Court "original jurisdiction in all causes except those given by statute to
- 26 other trial courts." The statute under which this action is brought does not specify any other basis
- 27 of subject matter jurisdiction.

1	16.	The California	Superior Court has	iurisdiction of	over DEFENDANTS based of	on

- 2 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
- 3 corporation or association that is a citizen of the State of California, does sufficient business in
- 4 California, have sufficient minimum contacts in California, and/or otherwise purposefully and
- 5 intentionally avail themselves of the California market through their manufacture, importation,
- 6 distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS'
- 7 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
- 8 with traditional notions of fair play and substantial justice.
- 9 17. Venue is proper in the Superior Court for the County of San Francisco pursuant to
- 10 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
- jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
- 12 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
- 13 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
- 14 respect to the PRODUCTS that are the subject of this action.

#### REGULATORY BACKGROUND AND LAW

- 16 18. In 1986, the people of the State of California approved an initiative addressing
- 17 concerns regarding the harms caused by hazardous chemicals and declaring their right "[t]o be
- 18 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive
- 19 harm." Ballot Pamp., Proposed General Law, Gen, Elec. (Nov. 4, 1986) at p.3.
- 20 19. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986
- and codified at Health & Safety Code §§ 25249.6 et seq., Proposition 65 states in relevant part that
- 22 "[n]o person in the course of doing business shall knowingly and intentionally expose any
- 23 individual to a chemical know to cause cancer or reproductive toxicity without first giving a clear
- 24 and reasonable warning to such individual..."
- 25 Under the Act, a "person the course of doing business" is defined as a business with
- 26 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from

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- 1 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" health
- 2 hazard warning. Health & Safety Code § 25249.6
- 3 21. An exposure to a hazardous chemical is defined as one that "results from a person's
- 4 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product..." 27
- 5 C.C.R. § 25600(h).
- 6 22. Proposition 65 provides that persons violating the statute may be enjoined in any
- 7 court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per
- 8 violation. Health & Safety Code § 25249.7.
- 9 23. On October 24, 2003, pursuant to Proposition 65, California identified and listed
- 10 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became
- subject to the "clear and reasonable warning" requirements one year later, on October 24, 2004.
- 12 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

# 13 <u>STATEMENT OF FACTS</u>

- 14 24. Plaintiff purchased, investigated and tested DEFENDANTS' PRODUCTS at an
- 15 accredited lab, and, after consultation with a person with relevant and appropriate expertise who
- 16 reviewed the collected data and analyzed the risk of exposures to DEHP, determined the
- 17 PRODUCTS exposure consumers in California to the listed chemical at levels that require a
- 18 warning under the statute, based on consumers touching, handling or otherwise utilizing the
- 19 PRODUCTS in accordance with their reasonably foreseeable usage.
- 20 25. Plaintiff purchased the PRODUCT, without a warning, in California.
- 21 26. DEFENDANT is a person in the course of doing business.
- 22 27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
- 23 there was a reasonable and meritorious case for this private action, and included the factual
- 24 information supporting the certificate when it served the notice on the California Attorney
- 25 General's Office, as required. Health &Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.
- 26 28. Thereafter, on October 5, 2018, plaintiff served a 60-Day Notice of Violation
- 27 ("Notice"), together with the requisite certificate of merit, on DAISO, the California Attorney

- 1 General's Office, and the requisite public enforcement agencies, alleging that, as a result of
- 2 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were and are being
- 3 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS without first
- 4 receiving a "clear and reasonable warning", as required by Proposition 65.
- 5 29. After receiving plaintiff's Notice, no public enforcement agency has commenced
- 6 and is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to
- 7 enforce the alleged violations that are the subject of the Notice.

# 8 <u>FIRST CAUSE OF ACTION</u>

- (Violation of Proposition 65 Against All Defendants)
- 10 30. CAPA realleges and incorporates by reference, as if fully stated herein, the
- allegations set forth in Paragraphs 1 through 29, inclusive.
- 12 31. DEFENDANTS' PRODUCTS contain DEHP in levels that require a clear and
- 13 reasonable warning under Proposition 65.
- 14 32. DEFENDANTS knew or should have known that the PRODUCTS they
- 15 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.
- 16 DEFENDANTS were also informed of the presence of DEHP in the PRODUCTS through
- 17 Plaintiff's Notice.

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- The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
- 19 offer for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable
- 20 use of the PRODUCTS, through dermal contact and/or ingestion.
- 21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
- 22 continues to cause, consumer product exposures to DEHP.
- 23 35. DEFENDANTS know that the normal and reasonably foreseeable use of the
- 24 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.
- 25 36. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
- of the PRODUCTS will occur by their deliberate, non-accidental participation in the California
- 27 marketplace.

- 1 37. The consumer exposures to DEHP, caused by DEFENDANTS and endured by
- 2 consumers and other individuals in California, are not exempt from the "clear and reasonable"
- 3 warning requirements of Proposition 65.
- 4 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
- 5 consumers in California who have been, or who will be, exposed to DEHP through dermal contact
- 6 and/or ingestion resulting from their use of the PRODUCTS.
- 7 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
- 8 directly by California voters, consumers exposed to DEHP through dermal contact and/or ingestion
- 9 as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and
- 10 reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for
- which they have no plain, speedy, or adequate remedy at law.
- 12 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
- 13 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
- 14 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
- 15 ongoing and continuous in nature and, unless enjoined will continue in the future.
- 16 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
- described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
- 18 per day for each violation.
- 19 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
- 20 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

# 21 <u>PRAYER FOR RELIEF</u>

- Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,
- 23 as follows:
- 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
- 25 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
- 26 otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and
- 27 reasonable warning" regarding the harms associated with exposures to DEHP;

1	2.	That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary		
2	and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the			
3	chain of commerce in California without a "clear and reasonable warning";			
4	3.	That the Court, assess civil penalties against DEFENDANTS, and each of them, in		
5	the amount o	f \$2,500 per day for each violation of Proposition 65, in an amount to be determined at		
6	trial;			
7	4.	That the Court award plaintiff its reasonable attorneys' fees and costs of suit,		
8	incurred herein; and			
9	5.	That the Court grant any further relief as the Court may deem just and equitable.		
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11				
12	Dated: May	24, 2019 Respectfully submitted,		
13		GATES JOHNSON LAW		
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15				
16		By: L. Gates		
17		By: Kimberly Gates Johnson		
18		Attorneys for Plaintiff		
19		Center for Advanced Public Awareness		
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